

**LICENSING COMMITTEE held at COUNCIL OFFICES LONDON ROAD
SAFFRON WALDEN on 16 MARCH 2011 at 7.30pm**

Present: Councillor E W Hicks – Chairman

Councillors H J Asker, J E Hudson, J I Loughlin, D J Morson
and A D Walters.

Officers in attendance: Michael Perry (Assistant Chief Executive – Legal),
Stephen Joyce (Assistant Chief Executive – Finance), Murray
Hardy (Licensing Officer) and Catharine Roberts (Democratic
Services Officer).

LC67

PUBLIC QUESTION AND ANSWER SESSION

The Chairman welcomed all present and invited members of the public
present to speak in accordance with their notice of intention to do so.

Statements were then made by Mr B Drinkwater, Mr R Sinnott and Mr M
Ott.

Mr Drinkwater explained that ULODA was now collating replies to a
questionnaire about fares review which the Association had sent to the
Trade throughout the District. ULODA would develop its proposals
regarding fares in the light of these replies.

He thanked the Council, mentioning in particular Councillor Walters, the
Assistant Chief Executive-Legal and the Licensing Officer, for the new taxi
rank in the High Street. New signage had now been installed but there was
nevertheless a problem of cars parking on the taxi rank.

Mr Sinnott reiterated the desire of the Association to continue to contribute
to the Committee's budget process in 2011/12, and Mr Drinkwater
expressed a concerned interest in the new "executive arrangements"; the
Association valued its liaison with the Committee and wished that to
continue through whatever changes were imminent.

Mr Ott summarised the progress of the cab4one project. The Council had
endorsed this by licensing his Smart car as a private hire vehicle subject to
review in a year. The project was not showing a profit in the current year
but there was 100% customer satisfaction. A CCTV camera was used by
agreement with all concerned when children and vulnerable people were
carried, and wi fi too. The car was 100% reliable though slightly less
economical than its makers claimed.

LC68

APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

Apologies for absence were received from Councillors E L Bellingham-Smith and J A Redfern.

LC69

MINUTES

The minutes of the scheduled meeting of the committee held on 19 January 2011 were received confirmed and signed by the Chairman as a correct record, subject to the inclusion of the apologies for absence submitted by Councillor D G Perry.

The Assistant Chief Executive - Legal informed the meeting that no appeal notice had been received regarding the Committee's decision set out in minute LC66 and that the time for such appeals had now elapsed.

Councillor Morson referred to the offer by the Assistant Chief Executive – Finance to discuss some budget figures with the Trade. The Assistant Chief Executive – Legal had no knowledge of discussions so far but confirmed that there would be a small surplus in the current year arising from the fact that fees were reduced during the course of the year. There was a forecasted deficit in the next year and the fees surplus was being reduced to zero over a three year period.

LC70

PRIVATE HIRE LICENSING – SMART CARS

The Committee considered the report of the Licensing Officer who informed the meeting about the growing client base, facilities and projected expansion of the business. No difficulties had been reported by the public about the service and the operator was a member and had the support of ULODA.

Councillor Perry was concerned about the integrity of the CCTV and asked whether the review period could be extended. The Assistant Chief Executive – Legal indicated this could not be done by the committee as licensing policy would become an executive function under executive arrangements.

Other Members were impressed by the comments of Mr Ott's clients particularly those of Accuro, and Councillor Perry was invited to disclose his fears. He answered that there was no room for a guide dog for the disabled and that it was important to take into consideration what might be included in the Equalities Act. The Assistant Chief Executive-Legal commented that any change in vehicle standards would apply to all vehicles, not just Smart cars.

RESOLVED that the report be noted.

LICENSING BY COUNCILS OPERATING EXECUTIVE ARRANGEMENTS

The Committee considered the report of the Assistant Chief Executive - Legal which explained how the Council would be dealing with matters under executive arrangements.

As a point of order Councillor Perry expressed concern about the destination of the non-hearing licensing functions under the new cabinet system of government. He thought that this aspect had not been discussed in any meeting of the Constitutional Working Group. He had been told that the regulatory committees would stay as they were. He therefore considered it unconstitutional and wrong that it now appeared the new regulatory committee would not deal with non-hearing functions.

Councillor Morson added that Members had been given two briefings on Cabinet arrangements when the Chief Executive had said that the two regulatory committees would not be affected by the change. The report now before the Committee had not been put before the Constitutional Working Group. There was only one reference in the new Constitution to the Licensing Committee; it said merely that Committees would be appointed. Councillor Morson continued that the report now before the Committee had not been flagged up in previous debates.

The Assistant Chief Executive – Legal explained details of the executive arrangements had been contained in reports to Full Council on several occasions after discussion by the Constitution Working Group. The regulatory committees would continue with their licensing (hearing) powers. He directed Members' attention to Paragraphs 7 and 8 of the report which explained that performance of different Council functions was allocated to the Council or particular committees or officers. In default of allocation, functions must be performed by the executive. The Leader could perform executive functions or delegate them to the Executive, to individual members of the executive, to committees of members of the executive and to officers. It had been seen in a recent case that policy matters would be treated as executive powers by default.

Councillor Morson stressed the need for an organisation to liaise with the taxi Trade. The Assistant Chief Executive – Legal said that there was nothing to prevent any member or group of members from making recommendations. The Leader had no power to delegate functions to a Committee containing non-executive Members.

In answer to a question from the Chairman the Assistant Chief Executive – Legal said it would be up to the Leader to decide how the licensing functions should be carried out. If there were a portfolio holder, no doubt the Committee and the portfolio holder would liaise. He answered questions

from Members about the effects the constitutional change would have on particular aspects of the current Committee's powers.

Councillor Walters said that he had received the impression that the functions of the Licensing and the Planning Committees would not be carried out by the Executive.

Councillor Morson was concerned that there would be no access for Trade voices if the budget and policies for Licensing were to be Executive functions.

The Leader assured the meeting that the Cabinet system was flexible and could be adapted to whatever the Members wished. Members were nevertheless concerned that they were not completely au fait with the position, and Councillor Walters asked for a complete clarification.

The Chairman of the Committee pointed out that the Council had passed a resolution incorporating these matters and the relevant report had said that the work of the Licensing Committee would not in future require as many meetings.

RESOLVED that the Committee's concern and the possibility of assistance from the Leader be flagged up.

LC72 **EXERCISE OF DELEGATED POWERS**

The Committee considered the report of the Assistant Chief Executive – Legal (circulated at the meeting) on the exercise of his delegated powers since the last meeting.

Councillor Perry thanked the Assistant Chief Executive – Legal for the regular communication on this matter.

RESOLVED that the report be noted.

LC73 **NOISE AUDIBILITY CONDITIONS**

The Committee received a report from the Assistant Chief Executive - Legal on implications of the case of R. (on behalf of Developing Retail Ltd) –v- South Hampshire Magistrates Court & Portsmouth City Council (“the Portsmouth case”).

He asked the Committee to determine whether amendments should be considered to the licensing policy to meet doubts cast by this case on the legality of some noise audibility conditions. The deputy high court judge had held in that case that a noise audibility condition was unenforceable due to

vagueness because there was no clarity as to the premises or location intended to be protected and the meaning of “inaudible” was not clear. She had indicated that the defect could have been remedied by clear specification of the particular places to be protected and the decibel levels acceptable there.

In the view of the Assistant Chief Executive - Legal the judge in the Portsmouth case was seeking an absolute measure. Under directions issued under the Noise Act 1996 the permitted level of noise was expressed as 34 decibels where the underlying noise level did not exceed 24 decibels or 10 decibels above underlying noise levels in any other case. The Noise Act had been enacted to provide a summary method of dealing with noise in extreme situations. It was not necessarily an appropriate way of determining how premises were managed on a day to day basis. Moreover, the existence of a condition under the Licensing Act 2003 would not prevent officers from using Noise Act powers.

Although helpful comments on non-specific noise audibility conditions had been made by the judge in the English Heritage UDC case (and by government guidance) these were less weighty as they were obiter dicta; the issue was costs, not the validity of the Council’s condition.

Because ambient noise levels varied it was necessary to establish what those levels were so as to fix a decibel limit for the acceptable level of noise. This could only be done using a noise survey.

The Council could set out in its licensing policy circumstances in which the licensing committee would find a noise survey useful and what the likely approach of the committee would be if such a survey were not forthcoming. The Assistant Chief Executive - Legal suggested the addition of a new paragraph 5.7 to the licensing policy:-

“Applicants for licences which include regulated entertainment will be aware of the potential of such entertainment to cause a public nuisance by reason of noise from the premises. If representations are made or a review is called for the Authority may consider imposing a condition to the effect that the licensee shall take measures to ensure that music will not exceed a prescribed decibel limit at the boundaries of certain properties or within a location described in the condition. What may be an acceptable level of noise may vary from location to location or depending on the time of day as perception of noise from a particular source is affected by background noise levels. Directions given under the Noise Act 1996 provide that the permitted level for the purposes of that Act is 34 decibels where the underlying noise level does not exceed 24 decibels or 10 decibels above underlying noise levels in any other case. In the event that representations are received and the Authority concludes that a noise limiting condition is required the

starting point for such a condition would be 34 decibels. If an applicant wishes to contend that a higher limit is appropriate then the Authority would expect the applicant to provide a noise survey to support such a contention.”

With regard to existing premises if non-specific audibility conditions were breached, the Assistant Chief Executive - Legal recommended that the appropriate course of action would be for an application to be made for a review of the licence to enable a Portsmouth compliant condition to be added to the licence rather than to seek a prosecution.

The Chairman commented that since a clear base figure made the condition less easy to overturn, it was important to impose a decibel limit of 34Db.

RESOLVED that a new paragraph 5.7 as set out above be approved as the basis for consultation for a proposed amendment to the Council’s Licensing Policy.

LC74 **CRB CHECKS**

The Licensing Officer informed the meeting that the cost of the enhanced CRB check would rise, from 6 April 2011, to £44.

LC75 **NEW COMMITTEE ARRANGEMENTS**

Members of the Committee were concerned to convey their thanks and goodwill to the Chairman and each other on the occasion of the Committee’s last scheduled meeting in its current form.

Councillor Lemon, on behalf of Members, thanked Councillor Hicks very much for his exemplary work as Chairman of the Committee which had on occasion required diplomatic resolution of keen controversy.

Councillor Hicks attributed the Committee’s success to its Members whom he considered excellent. He thanked them and commented that he had tried to carry on in the same vein as his predecessor Councillor Loughlin.

The meeting ended at 9.20 pm